

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HITOSHI IWATA,
YASUSHI NISHIBE,
KENICHI KINOSHITA

Appeal No. 1997-3253
Application 08/357,196

ON BRIEF

Before BARRETT, FLEMING, and GROSS, **Administrative Patent Judges.**

FLEMING, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 through 20, all of the claims pending in the present application.

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The present invention relates to a device for controlling the drive of a power window for an automobile.

Independent claim 1 is reproduced as follows:

1. A device for controlling the drive of a power window, wherein said drive includes a switch that, when moved into an operated state, actuates an electrically powered driving source to raise or lower a door glass comprising:

an automatic continuation means for automatically holding the operated state of the switch so as to continuously raise or lower the door glass; and

a thermistor means disposed in the vicinity of the driving source for shutting off electricity to the driving source as a result of heat generated by a driving source locking current which flows through the thermistor upon complete closure or complete opening of the door glass, and for shutting off electricity supplied to the driving source as a result of heat generated by the driving source from an overload condition.

The Examiner relies on the following references:

Lemirande	4,394,607	July 19,
1983		
Sobiepanek et al.	4,716,486	Dec. 29, 1987
(Sobiepanek)		

Claims 1 through 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lemirande and Sobiepanek.

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Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the briefs¹ and answer for the respective details thereof.

OPINION

We will not sustain the rejection of claims 1 through 20 under 35 U.S.C. § 103.

The Examiner has failed to set forth a *prima facie* case. It is the burden of the Examiner to establish why one having ordinary skill in the art would have been led to the claimed invention by the express teachings or suggestions found in the prior art, or by implications contained in such teachings or suggestions. *In re Sernaker*, 702 F.2d 989, 995, 217 USPQ 1, 6 (Fed. Cir. 1983). "Additionally, when determining obviousness, the claimed invention should be considered as a whole; there is no legally recognizable 'heart' of the invention." *Para-Ordnance Mfg. v. SGS Importers Int'l, Inc.*, 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995),

¹ Appellants filed an appeal brief on November 19, 1996. Appellants filed a reply brief on January 14, 1997. The Examiner in response to the reply brief mailed a communication on February 24, 1997 stating that the reply brief has been entered and considered.

cert. denied, 519 U.S. 822 (1996), **citing W. L. Gore & Assocs., Inc. v. Garlock, Inc.**, 721 F.2d 1540, 1548, 220 USPQ 303, 309 (Fed. Cir. 1983), **cert. denied**, 469 U.S. 851 (1984).

Appellants argue on pages 9-12 of the brief, that neither reference teaches or suggests positioning a thermistor in the vicinity of the driving source to shut off electricity to the driving source as a result of heat generated by the driving source from the overload condition. On page 2 of the reply brief, Appellants further argue that neither reference teaches or suggests the two functional limitations recited in Appellants' claim for a thermistor means for shutting off electricity to the driving source as a result of heat generated either by (1) a driving source locking current which flows through the thermistor upon complete closure or complete opening of the glass door, or (2) the driving source from an overload condition. In particular, Appellants argue that Sobiepanek, taken as a whole, actually teaches against the aforementioned functional limitations. Appellants point out that Sobiepanek teaches that if the thermistors 17 and 18 were mechanically mounted in the vicinity of the motor windings 1

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and 2 so as to achieve the second recited function to shut off
the electricity to the

driving source when heated by heat radiated from the driving source itself, the thermistors 17 and 18 could not achieve the stated objective of rapid restarting of the motor after a momentary stoppage. The heat radiated from the motor itself would delay such restarting.

Turning to each of Appellants' independent claims, we find that claim 1 recites

a thermistor means disposed in the vicinity of the driving source for shutting off electricity to the driving source as a result of heat generated by a driving source locking current which flows through the thermistor upon complete closure or complete opening of the door glass, and for shutting off electricity supplied to the driving source as a result of heat generated by the driving source from an overload condition.

Similarly, we find that Appellants' claim 6, which is the only other independent claim, recites

a thermistor means disposed in the vicinity of the driving source and electrically connected between said driving source and source of electrical power for shutting off said power to said driving source when heated by a driving source locking current which flows through the thermistor upon complete closure or complete opening of the door glass, and for shutting off electricity to said driving source when heated by heat radiated from the driving source itself as a result of an overload condition.

We note that in the Examiner's answer, the Examiner relies on Sobiepanek for the teaching of placing the thermistor in the vicinity of the electric motor so that the electric motor will heat the thermistor. Upon a closer reading of Sobiepanek, we find that Sobiepanek teaches away from the Examiner's findings.

In column 1, lines 16-21, Sobiepanek teaches that when the current intensity increases in the circuit, the prior art thermistor undergoes a temperature rise which tends to reduce the supply current as well as the terminal voltage of the excited winding possibly to such an extent that this winding is put out of service. In column 1, lines 43-49, Sobiepanek teaches that one of the objects of Sobiepanek's invention is to propose an electric motor in which the provision is made for an overcurrent protection device comprising thermistors, in which the voltage supply to the windings is not totally affected at the time of a momentary stoppage and which is capable of restarting rapidly after the cause of said stoppage has been removed. In column 1, lines 50-64, Sobiepanek teaches that in order to achieve this object, the electric motor proposed in accordance with the invention comprises a

rotor, at least two motor windings and a device for providing protection against overcurrent in the motor windings comprising thermistors having a positive temperature coefficient. In accordance with a distinctive feature of the protective device, Sobiepanek teaches that the device comprises at least two parallel thermistors each mounted in series with at least one motor winding. Thus, in the event of stoppage of the motor, the thermistor associated with the continuously excited winding undergoes a temperature rise. When the cause of the stoppage has been removed, the winding whose thermistor is not heated up is supplied at a normal voltage, thus permitting restarting of the motor.

In column 2, lines 20-44, Sobiepanek teaches that Fig. 1 shows a schematic representing an electric motor equipped with two thermistors 17 and 18, which are connected in series with two motor windings 1 and 2. In column 2, lines 45-50, Sobiepanek teaches that the operation device is such that when there is a moment of accidental stoppage of motor winding 1, then thermistor 17 undergoes a temperature rise while thermistor 18, which is located in the circuit of the unexcited motor winding 2, remains at its normal operating

point. At the time of release of the motor, circuitry is used to switch to motor winding 2, which is then supplied under normal conditions, because thermistor 18 has not been heated. Therefore, the motor is able to have a rapid restart. Thus, the thermistors 17 and 18 are not placed in the vicinity of the electric motor because both thermistors would have been heated, thereby preventing a rapid restart.

Therefore, we find that the Examiner has failed to show any evidence of a teaching or suggestion of placing the thermistors in the vicinity of the electric motor so that the electric motor heats them up to cause them to cut off the current to the electric motor.

We are not inclined to dispense with proof by evidence when the proposition at issue is not supported by a teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a ***prima facie*** case. ***In re Piasecki***, 745 F.2d 1468, 1471-72, 233 USPQ 785, 787-88 (Fed. Cir. 1984); ***In re Knapp-Monarch Co.***, 296 F.2d 230, 232, 132 USPQ 6, 8 (CCPA 1961); ***In re Cofer***, 354 F.2d 664, 668, 148 USPQ 268, 271-72 (CCPA 1966). Furthermore, our reviewing

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court states in *In re Piasecki*, 745 F.2d at 1472, 223 USPQ at 788, the following:

The Supreme Court in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), focused on the procedural and evidentiary processes in reaching a conclusion under Section 103. As adapted to ex parte procedure, Graham is interpreted as continuing to place the "burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under section 102 and 103". **Citing *In re Warner***, 379 F.2d 1011, 1016, 154 USPQ 173, 177 (CCPA 1967).

We have not sustained the rejection of claims 1 through 20 under 35 U.S.C. § 103. Accordingly, the Examiner's decision is reversed.

REVERSED

LEE E. BARRETT)
Administrative Patent Judge)
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